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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 566.

RAILROAD RETIREMENT BOARD, AND OTHERS, *Petitioners*,

vs.

THE ALTON RAILROAD COMPANY, AND OTHERS, *Respondents*.

MEMORANDUM OF RESPONDENTS IN RE PETITION FOR WRIT OF CERTIORARI.

SYDNEY R. PRINCE,
ROBERT V. FLETCHER,
JACOB ARONSON,
EDWARD S. JOUETT,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Respondents, plaintiffs in the Supreme Court of the District and appellees in the Court of Appeals of the District, do not oppose the application of the petitioners for writ of certiorari. The issuance of the writ as prayed would result in the speedy and final determination of the important questions involved in this case.

We point out two inaccuracies in the petition for certiorari.

On page 3 the petition purports to quote the purposes of the Railroad Retirement Act as stated in Section 2 (a) of the Act itself There is omission in the quotation which might lead to misapprehension. Section 2 (a) provides (R. 16-17):

> "For the purpose of providing adequately for the satisfactory retirement of aged employees and promoting efficiency and safety in interstate transportation, and to make possible greater employment opportunity and more rapid advancement of employees in the service of carriers, there is hereby established a railroad retirement system; and it is made the duty of all carriers and employees subject to this act to perform and fulfill the obligations imposed thereby. This act shall be administered and construed with the intent and to the purpose of providing the greatest practicable amount of relief from unemployment and the greatest possible use of resources available for said purpose and for the payment of annuities for the relief of superannuated employees."

It is said on page 5 of the petition, "The Supreme Court of the District of Columbia concluded that Congress has power to enact a statute 'providing for the compulsory retirement at a certain age of employees of railroads engaged in interstate commerce, together with provisions for the pensioning of employees so retired.'"

The trial court did not hold that. It held the statute before it unconstitutional for the reasons set out in the memorandum opinion (R. 261-265) and in its conclusions of law (R. 273-274). It simply refused to go further and utter a dictum as to whether Congress might have power to enact some other compulsory retirement and pension statute, saying (R. 262):

> "I am not prepared to say that the enactment of a statute providing for the compulsory retirement at a certain age of employees of railroads engaged in interstate commerce together with provisions for the pensioning of employees so retired is beyond the power of Congress under the interstate commerce clause of the Constitution."

In taking the position stated in the first paragraph of this memorandum it will be understood that these respon-

dents, although not opposing the petition for certiorari, assert that in their opinion the holding of the court below, that the Railroad Retirement Act is unconstitutional, was and is correct. And these respondents do not agree that the questions involved herein are so narrow as stated on page 2 of the petition. Broader grounds of unconstitutionality of the statute than those adopted by the trial court were advanced by the bill of complaint, were pressed upon the trial court (R. 274-279) and will, if the writ issues, be pressed upon this Court. It is clear from the authorities that in such situation the broader grounds to sustain the decree below will be properly before this Court. *Story Parchment Paper Co. v. Paterson*, 282 U. S. 555, 560; *Langnes v. Green*, 282 U. S. 531, 535; *United States v. American Railway Express Company*, 265 U. S. 425, 435.

Respectfully submitted,

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